



THE LAW SOCIETY OF UPPER CANADA  
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TORONTO, ONTARIO  
M5H 2N6

ANNUAL REPORT 1989

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A Report covering the year July 1, 1988 to June 30, 1989

### CHANGES IN THE MEMBERSHIP OF CONVOCATION

On September 2, 1988, Mr. James J. Carthy, Q.C. was appointed to the Ontario Court of Appeal and Mr. Paul G. Philp, Q.C. was appointed to the High Court of Justice. In their places, Convocation at its September meeting, elected Mr. Earl J. Levy (Toronto) and Mr. Bernard Shaffer, Q.C. (Thunder Bay) to be Benchers.

On October 11, 1988 Thomas M. Wood, Q.C. was appointed to the Provincial Court in Bracebridge. Mr. Thomas J. P. Carey, Brampton, replaced Mr. Wood as a Bencher.

On August 2, 1988, Ms. Denise Bellamy (Toronto) was elected Bencher to fill the vacancy created by the election of Mr. Lee K. Ferrier, Q.C., as Treasurer.

Mr. Thomas G. Sosa, one of the four Benchers appointed by the Lieutenant Governor in Council, vacated his position upon appointment as Deputy Minister of Energy in the Ontario Government. In his place, Ms. Anne-Marie Stewart of Toronto was appointed to be a Bencher.

On November 16, 1988, the Hon. Arthur M. LeBel, Q.C. an ex-officio Bencher, died. Mr. LeBel was the last surviving Bencher appointed by virtue of having held office as a judge of the Supreme Court of Ontario.

On June 14, 1989, Mr. Pierre Genest, Q.C., died. Mr. Genest was a Bencher ex-officio, having served as Treasurer in 1985-1986.

### SENIOR STAFF CHANGES

On July 1, 1988, Mr. Kenneth Jarvis, Q.C. retired as Under Treasurer. He was succeeded by Mr. Donald A. Crosbie, Q.C.

On March 31, 1989, Mr. George M. Thomson resigned as Director of Education and was succeeded by Mr. Alan D. Treleaven.

### LAW SOCIETY MEDAL WINNERS

Five distinguished members of the Bar were honoured in May 1989, with the award of The Law Society Medal. The honour, established by the Benchers in 1984, is granted to members of the Society who perform the ordinary tasks of a lawyer but with such diligence or effectiveness or so much to the benefit of the profession as a whole that they are deserving of recognition.

Nominations for the award are reviewed by The Law Society Medal Committee which is composed of the Treasurer of the Society, four Benchers, the Chief Justice of Ontario, the President of the Canadian Bar Association - Ontario, the President of the Advocates Society and the Chairman of Ontario Law Deans. Those awarded the Law Society Medal were:

NOTIFICATION TO THE PRACTICING BARRISTERS

Allan Borovoy: in recognition of his dedicated service to the profession and public in raising civil liberty issues while working for the Canadian Civil Liberties Association. Pursuing the goal of civil liberties, he has taken on unpopular causes and has given up a great deal in the way of advancement that might have been his.

John Bruce Dunlop: for his contribution to the profession as a legal scholar, writer and Editor in Chief of both the Ontario Reports and the Dominion Law Reports. A law professor since 1957, he has taught and imbued thousands of students with a respect for the law and has, through his writings and his editorial work, contributed to the development of the law both in Ontario and throughout Canada.

Mary Jane Eberts: in recognition of her outstanding work in the area of women's rights both in the courts and the political arena and the example she has set through her successful career as a law professor, practitioner and political activist to younger members of the Bar.

Stanley Elmer Fennell, Q.C.: in recognition of his career-long dedication to the profession evidenced by his participation in the Canadian Bar Association and the Law Society. He was President of the Canadian Bar Association - Ontario in 1956-57 and President of the Canadian Bar Association in 1961-62. Of major importance to the profession not only in Ontario but across Canada was his work as Chairman of the Special Committee of the Canadian Bar Association which revised the Canon of Legal Ethics which resulted in the Canadian Bar Association's Code of Professional Conduct. This became the basis for many of the provincial codes of professional conduct. He was elected a Bencher in 1961 and at each subsequent election until he became a life Bencher in 1977. He is also a past president of the Federation of Law Societies of Canada.

Phillip Barry Chaytor Pepper, Q.C.: in recognition of his long service to the profession both as a Bencher and a practitioner where he sought by example and by precept to maintain and train others in the highest traditions of the Bar. He diligently applied himself to the work of the Society as Chairman and member of numerous committees. He also displayed the same energy and commitment in his role with the Federation of Law Societies of which he is a past president and as President of the Fox Foundation which funds an exchange program for young lawyers with the Middle Temple.

**COMMITTEE REPORTS****ADMISSIONS COMMITTEE**

Chair - Patricia J. Peters, Q.C.

**MEMBERSHIP STATISTICS**Members in Good Standing as at June 30, 1989:Members in Private Practice in Ontario

Sole Practitioners	4,270
Partners in Law Firms	5,684
Employees of Law Firms	2,960
Associates	1,833
	14,747

Members otherwise employed in Ontario

Education	200
Government	1,758
Other	2,317
	4,275

Members not employed in Ontario

Retired	1,553
Residing out of Province	871
	2,424

Total members in good standingOther Membership Data:Members suspended (non-payment

of fees/levies/discipline)	1,321
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Members in abeyanceResigned at own requestPermitted to resignDisbarred

The membership information above, includes members called in March 1989, as well as life members who are excused fees.

Calls and Admissions

From July 1, 1988 to June 30, 1989, 65 applications to transfer to practice in Ontario from other Canadian provinces were received, they were as follows:

	APPROVED
Alberta	16
British Columbia	13
Manitoba	6
New Brunswick	3
Newfoundland	0
Nova Scotia	9
Quebec	14
Saskatchewan	4

Under Regulation 4, which governs the practice in Ontario of members of other Canadian provinces, 33 applicants were called to the Bar and admitted as solicitors.

Under Regulation 5, which governs admissions for law teachers, 4 professors were called to the Bar and admitted as solicitors.

Under Regulation 6, which governs transfer for occasional court appearances, 16 applicants were called to the Bar and admitted as solicitors.

#### FOREIGN LEGAL CONSULTANTS

In October 1988 the Society adopted a policy relating to the establishment of law offices in Ontario by foreign law firms for the purpose of giving advice on the law of their home jurisdictions. The policy adopted by Convocation is similar to that in effect in many other jurisdictions.

The policy deals only with law firms from jurisdictions outside Canada. For lawyers within Canada, transfer procedures are already in place whereby lawyers from other provinces may be called to the Bar in Ontario.

Foreign legal consultants will be strictly limited to advising on the law of their home jurisdictions. Only persons who are members of the Law Society of Upper Canada will be permitted to provide advice on the law of Ontario. Foreign legal consultants will provide a service to individuals and corporations with international dealings. The experience in jurisdictions where the concept has been adopted appears to be positive and there does not appear to have been any adverse effect on the local profession.

A copy of the specific provisions may be obtained from the Secretary.

To date, three United States firms have been licensed as foreign legal consultants.

LEGAL EDUCATION COMMITTEE  
Chair - Allan M. Rock, Q.C.<sup>CD</sup>

**BAR ADMISSION COURSE**

During the year, 1091 students completed the Bar Admission Course and were called to the Bar.

The Bar Admission Course is being reformed in two respects. A special Articling Reform Sub-committee chaired by Philip Epstein, Q.C. has met on a number of occasions and is preparing a report for presentation to the Legal Education Committee. The Sub-committee has determined that students should continue to be required to article, but that steps must be taken by the Law Society to ensure that articling is an educationally sound experience. The Sub-committee is expected to present its recommendations in the early fall of 1989.

The teaching term of the Bar Admission Course is undergoing extensive reform. The reform work is well under way, with the new teaching term being scheduled to commence on May 14, 1990. After a one-month teaching term, students will fulfil the articling requirement and then return for a final twelve-week teaching term.

**CONTINUING LEGAL EDUCATION**

The Continuing Legal Education program continued to expand. The development of the following programs is of particular interest:

- (a) The computer classrooms in Ottawa and Toronto are being increasingly used. Lawyers and articling students use the classrooms both to complete computer assisted instruction courses and to develop basic and applied computer skills.
- (b) Audio teleconferencing of programs to communities throughout Ontario, particularly in the North, continued.

Continuing Legal Education programs are being re-evaluated. The Department is moving towards offering programs on the basis of an organized curriculum, with courses from a basic to an advanced level being offered on a regularly scheduled basis.

**FINANCE COMMITTEE**  
Chair - John D. Ground, Q.C.

**ANNUAL FEES**

The Law Society of Upper Canada introduced three "Classes" of fee-paying members for the fiscal year ended June 30, 1989. Budgeting was based on the assumption that 83% of our membership would fall into the full fee-paying category. As at June 30th, statistics show that 17,350 of our total fee-paying membership of 19,575 (or 88.6%) fell into that category. 1,650 members are in the second "non-practising" category with the balance in the "not gainfully employed" category.

The Society's annual fees for the fiscal year commencing July 1, 1989 have been set and are shown below (1988/89 comparatives also shown). The table also shows the allocation of fees into the four separate funds:

ANNUAL FEES	Total	General Fund	County Libraries	Ontario Legal Aid Plan	Compensation Fund
<u>1989/90</u>	\$ 17,350	\$ 16,015	\$ 58	\$ 183	\$ 52
I Full Fee	894	801	58	183	52
II 75% Fee	671	451	44	137	39
III 25% Fee	224	150	15	46	13
<u>1988/89</u>					
I Full Fee	980	593	54	188	145
II 75% Fee	735	445	40	141	109
III 25% Fee	245	149	13	47	36

In summary the fees for 1989/90 have been reduced by 8.8% which is a result of the substantial reduction in the Compensation Fund component as is shown on the above table.

**COMMENT ON FINANCIAL STATEMENTS**

The Financial Statements show the status of the three main Law Society Funds together with the results of operations for the year ended June 30, 1989. The two special purpose funds are the Errors and Omissions Insurance Fund and the Compensation Fund. All other operations of the Law Society, including administrative and professional purposes together with the Bar Admission Course and Continuing Legal Education, are included in the General Fund.

General Fund

In 1988 the Canadian Institute of Chartered Accountants established new accounting guidelines for non-profit organizations. The Society fully adheres to these recommendations and follows generally accepted accounting principles in its financial statements. There are two significant areas where this policy is evident.

First is that revenue reflected in the Statement of Revenues and Expenses includes all sources of income, whether received for a specific purpose or program, on a "gross" basis, rather than "net" as in the past. One example of this is the disclosure of the "Legal Aid Levy" which is part of the revenue generated through annual fees. In the past the Society collected the levy, paid its share of "assessable administrative expenses" and retained the difference in a separate account to be applied against future obligations. This year the amount of levy collected (together with interest earned on this fund) is shown as a separate revenue item. A new expense line has been added to disclose the amount paid over to the Ontario Legal Aid Plan on account of assessable administrative expenses for the Plan's year ended March 31, 1989. Any amounts collected in excess of requirements for the year are set aside as a "designated surplus". In other words, these funds cannot be used for other Society purposes. At June 30, 1989 the Society had in this surplus a total of \$1,866,748 including \$197,365 added in the current year. Other such amounts are disclosed in note 12 to the Financial Statements.

Second is that the Society's provision for major capital appropriations is shown as an allocation of surplus rather than a charge to the Statement of Revenue and Expenses. This year an amount of \$1,125,003 has been set aside for that purpose and is shown on the Statement of Operating Surplus. The result is that the excess of revenue over expenses appears high compared to prior years, but in fact this appropriation was budgeted. In view of the Society's plans for expansion of its operations, particularly with respect to Bar Admission Course Reform, and the contemplation of a major addition to the building at Osgoode Hall, this amount is appropriate.

One further important feature of the change in the reporting format this year is the disclosure of specific purpose revenues and relevant expenditures. In addition to the Legal Aid Levy, for instance, are the amounts which were collected on account of the County Libraries in the Province. The County Library fees collected this year were \$1,019,022 and the Law Foundation grants were \$675,000. A further \$137,815 is provided out of the Society's Library and Reporting budget. Total funding to the County Libraries was \$1,831,837 in the 1989 fiscal year.

In summary, it can be seen that of total revenues of \$25,028,707, \$11,255,249 or approximately 45%, come from annual fees with the balance from special levies, user fees, tuition fees, grants and investment income.

### Errors and Omissions Insurance Fund

The Errors and Omissions Insurance Fund Balance Sheet and Statement of Revenue and Expenses, reflect the recognition, by way of reserves, of claims made against the fund. This continues a policy adopted in 1988 of having the financial report of the Fund in a format similar to that used in the insurance industry.

Included in the reserves which total \$54,102,383, are estimates of the current cost of settling claims over the life of each of the fund years. As well, an amount for Law Society costs (adjuster and counsel fees) and an estimate for members' deductibles which may not be collected have been added. Also each fund year is subject to a stop-loss amount under the insurance agreement and this is included in establishing the Society's ultimate liability. The balance in the fund, net of reserves, is \$3,632,821.

A complete review of the Society's reserving practices and an analysis of the reserve amounts at the year-end were an integral part of the auditors' examination.

For the fiscal year ended June 30, 1989, the primary level of coverage provided by The Law Society of Upper Canada's Mandatory Insurance Program was \$1,000,000 per occurrence, including defence costs. In order to keep the insurance costs to a manageable level, the group deductible, to be met directly by the Fund, was increased from \$150,000 to \$250,000 deductible per occurrence. The stop-loss for the 1988/89 fund year was \$27,000,000.

### Compensation Fund

The excess of revenue over expenses for the year is \$4,627,996 compared to \$4,995,800 at June 30, 1988, leaving a balance in the fund of \$27,713,086 at June 30th 1989.

The level of claims has continued to fall from a peak of \$25,958,000 in 1985 to the current level of \$11,311,445. If established claim limits were applied to claims existing at the year end, the Society's maximum exposure would be \$4,036,769. This is disclosed in note 7 to the Financial Statements.

### Summary

The Society is mindful of the fact that surpluses exist in each fund, particularly in the Compensation Fund. While the Society generally follows a prudent financial policy of budgeting for small surpluses each year and

setting aside funds for specific capital purposes, a special joint committee of the Finance and Compensation Fund Committees has been struck. Its purpose is to review current surpluses and, with a view to future financial requirements, to establish a policy on the application of surpluses.

**DISCIPLINE COMMITTEE**

Chair - Paul S. A. Lamek, Q.C.

During the past year there have been several significant developments in the field of discipline in Ontario.

Unfortunately, there has been an increase in the number of lawyers known to be involved in the use of cocaine. Experience has demonstrated that there is a substantial risk of misappropriation of trust funds and other criminal conduct if addiction results. One manifestation of this problem is the criminal lawyer who becomes too close to his drug trafficking clients and receives cocaine in lieu of fees.

Discipline proceedings concerning a member's duty to report potential misconduct to the Law Society have been commenced. One particularly high profile matter has led to the reporting of several serious unrelated matters by members who were not originally inclined to report but have reconsidered their obligation in this regard.

The year has seen a continued trend towards increased litigation in the preliminary stage of discipline hearings with frequent recourse to Charter and judicial review applications. The courts have been consistent in ruling such applications premature unless they deal squarely with jurisdiction to proceed. One noteworthy ruling is to the effect that there is no legal obligation upon a Law Society to advise a member at the investigational stage as to what is being investigated. Further, the conduct of an investigation is not an appropriate subject for judicial review. (Re Pilzmaker and the Law Society of Upper Canada, August 25, 1988, Ontario Divisional Court, leave to appeal to the Ontario Court of Appeal refused January 16, 1989. Divisional Court File 508/88).

It has become increasingly evident that pre-hearing conferences chaired by an individual Bencher can often lead to the consensual resolution of discipline matters, thereby freeing up Bencher time which is at a premium. Benchers who conduct pre-hearing conferences do not participate in any subsequent hearing of the matter. Guidelines have been developed as to how such conferences are conducted.

**COMPLAINTS**

Efforts by the Law Society to publicize its complaints process have resulted in significant increases in the number of complaints received over the past five years. Preliminary investigations were commenced on 2,054

separate matters between January 1 and June 30, 1989. This represents a 10% increase over the number of new investigations commenced during the same period in 1988.

The increase in volume has resulted in the hiring of additional staff to investigate complaints. The enhancement of the staff's investigative capabilities through organizational improvements is also being undertaken.

Preliminary investigations of complaints are conducted by an exchange of correspondence, telephone calls and on occasion, visits to the member's office. Standard procedures have been established with time deadlines related to each stage of the investigation. Computer generated ticklers enable the staff to track the progress of each file. Our statistics show that apart from highly complex matters most investigations are completed within a six month period.

Delays in the completion of legal work and a lawyer's failure to communicate are the most common complaints. Other areas of concern include fees disputes, failure to honour financial obligations, failure to honour undertakings and difficulties arising from termination of a lawyer's retainer.

Complaints in the area of real estate law comprised approximately one third of all complaints received. Another one third stemmed from civil litigation and matrimonial law. The balance were distributed over areas such as wills and estates, criminal law, administrative law, and corporate and commercial law.

Public perception of the Law Society's role in complaints remains ambivalent. Although the Law Society's discipline hearings and meetings of Convocation are open to the public, it is widely assumed that the Society protects its own when handling complaints. This is a problem shared by other self-governing professions. In contrast, the response of the public to Complaints Reviews which are conducted by lay Benchers has been overwhelmingly positive.

The Society has established a Complaints Review procedure whereby any complainant who disagrees with a staff member's decision can have the opinion reviewed by a lay Bencher sitting as a Complaints Commissioner. The complainant has the opportunity to attend personally and discuss the matter with the Commissioner. Neither the solicitor complained about nor the staff lawyer who investigated the complaint is present at the Review. In 1988, 203 requests for Review were received. Statistical data indicates that this number is likely to increase by at least 25% in 1989.

Complainants continue to experience considerable frustration with the distinction between solicitor's negligence and professional misconduct. Many feel it is unjust to have to retain another solicitor and incur further

expense in order to correct the mistakes of the first solicitor. Others expect the Law Society to reimburse them for their loss and are annoyed that the Law Society can only do this through claims against the Compensation Fund where dishonesty is involved. The degree to which negligence may also include misconduct continues to be the subject of debate at the Law Society.

While very few complaints result in any form of disciplinary action, they can offer useful insights into a lawyer's practice. This is particularly true in cases where a pattern of conduct can be discerned from a number of complaints received about a lawyer. Complaints are often symptomatic of more fundamental problems which cannot be effectively addressed through the disciplinary process and in these cases, the Complaints Department is a source of information for those sectors of the Law Society which concentrate on the identification and correction of problems which arise from incompetency, substance abuse and stress.

**LEGAL AID COMMITTEE**  
**Chair - T. G. Bastedo**

**Refugees**

Since January 1, 1989, the Ontario Legal Aid Plan has created panels of immigration lawyers in eleven area offices corresponding to border points in Ontario where immigration inquiries are held.

Through those panels, the Plan is providing counsel, pursuant to an agreement between the Provincial and Federal Governments, to fulfil a provision found in s.30 of the Immigration Act. According to that provision, refugee claimants are guaranteed counsel at border inquiries at the expense of the Minister of Employment and Immigration and, if they are unsuccessful at that stage, on leave applications to the Federal Court of Appeal and on the application to the Federal Court of Appeal, if leave is granted. The Plan provides counsel and is reimbursed by the Federal Government.

In the four busiest legal aid offices, namely Toronto, Welland, Windsor and Hamilton, there are approximately 300 immigration lawyers in total on the panels. In those four offices, approximately 2500 files have been opened since January 2, 1989.

Mandatory training seminars for panel counsel have been held across the province and updated information, including important cases, is regularly distributed. Panel members receive a legal aid certificate and are reimbursed according to the Legal Aid Tariff.

In addition, through its own resources, the Plan is providing counsel to inland refugee claimants where there is merit, to all refugee claimants at the full hearing before the Convention Refugee Determination Division, and in cases where there is merit, on appeal to the Federal Court of Appeal from a determination that a claimant is not a Convention Refugee.

#### **FINANCIAL ELIGIBILITY**

The Legal Aid Committee and the staff of the Plan spent a considerable amount of time during the past year on issues relating to financial eligibility. This process is ongoing and it is anticipated that major changes in this area will be implemented in early 1990. The Provincial Government recently announced that major changes will be made in its welfare legislation later this year. The Plan's eligibility guidelines have, to a significant degree, traditionally been influenced by welfare legislation. An analysis of the proposed welfare changes is currently being undertaken in order to determine which changes would be appropriate from a Legal Aid perspective and what the cost impact would be.

Prior to learning of the Government initiative, the Plan had embarked upon its own review. The Canadian Bar Association - Ontario, the Social Planning Council of Metropolitan Toronto and others had been critical of the Plan's eligibility criteria. Some critics considered the guidelines to be too liberal while others thought them to be too conservative.

After an exhaustive review, the Legal Aid Committee made a number of recommendations which included:

1. The "client of modest means" philosophy should be maintained.
2. Legal Aid services should not be used in conjunction with private retainers.
3. The Plan should continue to seek contributions from clients, family members and other financial sources.
4. There should be an allowance of \$2,500 for liquid assets which would be exempt from assessment. An additional \$500 should be allowed for each dependant.
5. Welfare recipients who do not own real property should not be required to undergo a financial assessment for Legal Aid.
6. Child care, generally for the full cost, should be recognized as a legitimate expense.
7. Payment agreements should be required if the Plan believes that clients may, within a reasonable length of time, be able to contribute.

#### **TARIFF**

The Legal Aid Tariff was not increased during the year. The full impact of the restructured Tariff which became effective in December of 1987 has been difficult to determine. The Law Society was, therefore, of the view that it would be unreasonable to ask for further increases until the Plan can, with some measure of certainty, ascertain the size of the 1987 increase.

#### **LONG TRIALS**

The Plan became increasingly concerned during the last year about lengthy criminal trials. Most of these cases are conspiracies or drug related and a number have exceeded six months in length. Some observers have noted that only the very rich or legally aided clients can afford such trials.

The Plan will begin shortly to monitor these cases more closely. Solicitors who believe that a case will exceed two weeks will be required to complete a form explaining why. In appropriate cases counsel will be asked to attend a meeting with Legal Aid staff in the hope that methods may be found to shorten the proceedings without prejudicing the legally aided clients.

#### **THE REMOTE NORTH**

During the past year the Plan has been involved in extensive negotiations with the leadership of the Nishnawbiaski nation and the Provincial Government in the hope that a new and better delivery system for legal services might be established in the remote northern region of Ontario. Agreement in principle has now been reached and the Provincial Government has made a commitment to provide funding in excess of \$800,000 per year exclusive of lawyers' fees.

The proposed model will include the use of native community legal workers and an all native board of directors which, in conjunction with the Law Society, will be responsible for the administration of the program. The citizens of the remote native communities will continue to utilize the services of the private Bar.

#### **BATTERED WOMEN**

The Plan recently expanded its services to battered women. Every resident of a shelter is now advised that she may obtain up to two hours of free legal advice from the solicitor of her choice without the necessity of an interview at a Legal Aid office. In addition, women who seek the assistance of a shelter but are not admitted may utilize the Plan's service.

## LEGAL AID EVALUATION

It is anticipated that the Federal/Provincial evaluation of the Plan will be concluded in December 1989.

## BUDGET

The Plan's budget for the fiscal year 1989/90 is approximately \$159,000,000 which represents an increase of approximately \$17,000,000 from the previous year. A detailed breakdown is as follows:

### 1989/90 Budget

<u>Income</u>	\$ 000
a. Province of Ontario	124,186.8
b. Law Foundation	21,000.0
c. Client Contributions	8,100.0
d. Client Recoveries	1,700.0
e. Research Sales	140.0
f. Law Society	3,558.0
g. Miscellaneous	<u>500.0</u>
	<u>159,184.8</u>
<u>Expenditures</u>	
1. Certificate Payments	109,636.4
2. Duty Counsel:	
(a) Fee for Service	7,560.0
(b) Salaried	800.0
3. Community Clinics	23,442.9
4. Student Legal Aid Societies	889.8
5. Research Facility	1,470.8
6. Area Administration	8,997.5
7. Provincial Administration	<u>6,387.4</u>
	<u>159,184.8</u>

### PROFESSIONAL CONDUCT COMMITTEE

Chair - A. Burke Doran, Q.C.

## PREPAID LEGAL SERVICE PLAN

Convocation approved a policy statement governing the participation of members of the Society in for-profit prepaid legal service plans.

The value of the guidelines is that both the administrators and

participating lawyers will know exactly what is expected of those members participating in prepaid legal service plans. A copy of the Policy Statement is set out below.

Policy Statement

Participation of a lawyer in a for-profit Prepaid Legal Service Plan is permissible provided the plan is in compliance with the following guidelines. As a general statement any plan must allow the lawyer to exercise independent professional judgement on behalf of the client, to maintain client confidentiality, to avoid conflicts of interest and to practise in a competent manner. The operation of the plan must not involve improper advertising or solicitation or improper fee sharing and must not interfere in any way in the relationship between the Law Society and the lawyer. Additionally, the plan must be in compliance with other applicable law and it is incumbent upon the participating lawyer to ensure that the plan is in compliance with this policy, the Rules of Professional Conduct where applicable and other regulatory provisions.

Where the plan or the plan's sponsor is in violation of this policy the lawyer who participates in the plan may be guilty of professional misconduct.

It is essential that neither the provisions of the plan nor the participating lawyer allow the sponsoring entity to interfere with a lawyer's exercise of independent professional judgement on behalf of a client to direct or regulate professional conduct. Rule 3 of the Rules of Professional Conduct provides that a lawyer must be both honest and candid when advising clients which includes giving open and undisguised advice about a client's situation and the advice must not be influenced by the lawyer's self-interest.

The plan sponsor should have no dealings with the plan's subscribers on legal issues after their matters have been referred to a lawyer. Once the lawyer-client relationship exists between a plan member and the participating lawyer, that relationship must be no different than the traditional lawyer-client relationship and there should be no interference with that relationship by the plan's sponsor. The agreement between the plan and the participating lawyers should make clear this basic relationship.

While a prepaid plan may not involve explicit direction or regulation of a lawyer's professional judgement in rendering legal services there is a potential for influence. For example, there is the potential for control of a lawyer who is sufficiently involved in the plan and therefore financially dependent upon it. To the extent that the participating lawyer's practice is exclusively or predominantly dependent on a plan, the issue of assuring the independence of the lawyer's professional judgement becomes more serious.

Since prepaid plans may have elements of referral services, insurance plans and direct provision of legal services, there may be issues relating to the unauthorized practice of law particularly to the extent that a plan may be delivering legal services through its own employees. Whether any aspect of the operation would constitute the unauthorized practice of law will depend on the particular facts. Members are reminded that Rule 19 provides that lawyers should assist in preventing the unauthorized practice of law. If a member is in doubt about whether or not a plan may involve the unauthorized practice of law, advice may be sought from the Unauthorized Practice Committee.

A plan should not contain any requirements which would interfere with the lawyer's responsibilities under Rule 5 governing conflicts of interest. Some plans attempt to prohibit a lawyer from bringing actions against the sponsor or other plan members. As the lawyer's rejection of a matter may in some circumstances mislead the client into believing that the action has no merit, the lawyer must be able to advise the client to seek other counsel. Once a member of a plan becomes a client of a lawyer the solicitor-client relationship exists and the lawyer should ensure that the plan's provisions regarding termination of employment do not contravene Rule 8 governing the circumstances in which a lawyer may properly withdraw services.

Any complaints involving professional misconduct or conduct unbecoming a solicitor under a plan must be referred by the administrators of the plan to the Law Society for review and appropriate action.

Regardless of how a plan is structured, a participating lawyer must be competent to handle referrals in the covered areas of law and have the ability to limit matters to a volume the lawyer can competently handle.

A participating lawyer must ensure that all advertising is accurate and that it does not lead to or create unjustified expectations.

Any advertising or solicitation by the plan sponsor, must conform to Rule 12 - Making Legal Services Available - subject to the remarks below regarding telemarketing.

Several months ago the Professional Conduct Committee interpreted paragraph 4 of Rule 12 of the Rules of Professional Conduct as prohibiting lawyers from engaging in telemarketing, a process whereby a lawyer or law firm would hire a company or individuals to telephone persons not known to the lawyer or law firm and would recommend to the listener that the services of the lawyer or law firm be retained.

The Professional Conduct Committee did not intend telemarketing to apply to the solicitation of potential subscribers by or on behalf of a prepaid legal service plan. Lawyers may participate in plans which have

direct solicitation marketing schemes provided that the personal contact with the potential subscriber is not undertaken by any lawyer who would be providing legal services under the plan. The prohibition extends to organizations controlled by lawyers who would provide the legal advice. The communication permitted by sponsoring entities must not be directed to persons known to need legal services in a particular matter but be designed to inform potential plan members generally of another means of affordable legal services.

Where a lawyer or law firm rendering legal services as part of a legal services plan has an interest directly or indirectly in that plan in terms of ownership, the client shall be advised of the exact nature of the interest and the lawyer shall obtain the written acknowledgement of that interest by the client and the client's consent to act.

#### **AFFILIATIONS WITH OTHER LAW FIRMS**

The Law Society has recently received inquiries from a number of law firms in Ontario asking if they may show on their letterhead their associations with law firms outside Ontario or their affiliation with another firm or group of law firms. The Committee recommended and Convocation agreed that there would be no harm in a firm showing an affiliation on its letterhead because this was informational in character. It is assumed that any law firm indicating an affiliation would in fact have such a relationship otherwise this would be a contravention of Rule 12 in that it would be false or misleading advertising.

#### **ONTARIO MEDICAL ASSOCIATION - LAW SOCIETY JOINT MEDIATION**

Discussions between the Ontario Medical Association and the Law Society have resulted in a proposed mediation scheme to assist in the problem of payment for medical-legal reports.

A panel of six persons will be established composed of two doctors to be nominated by the Ontario Medical Association, two lawyers to be nominated by the Law Society and two other professionals. From this group panels of three, a lawyer, a doctor and a third professional, would be established to conduct mediations. It will be a consensual process and the panel's recommendation would not be binding on the parties.

If the mediation process proves successful its scope will be extended to cover other difficulties that arise between lawyers and doctors.

The Law Society will pay a set fee to its lawyer nominees and the Ontario Medical Association will compensate its doctor nominees. The Ontario Medical Association and the Law Society will bear equally the fee paid to the third professional.

#### **LACK OF CONFIDENTIALITY IN FACSIMILE MACHINES**

The profession was reminded that there is a genuine lack of confidentiality in facsimile transmissions which may result in the confidentiality or privilege of documents sent by facsimile being lost. This loss may harm the client directly or indirectly.

#### **RULE 9 - FEES AND DISBURSEMENTS**

The Committee amended Rule 9 of the Rules of Professional Conduct so that it contains only a general statement rather than specifically detailing what are accepted disbursements. The Committee reviewed submissions made by various bodies and incorporated their suggestions in its report to Convocation. The amendments provide that when lawyers are asked to quote a fee they shall explain the nature and approximate amount of any anticipated disbursements to be incurred. Lawyers may not charge or accept any significant amount such as the cost of a title search as a disbursement unless it is fully disclosed in a timely fashion and is fair and reasonable.

#### **COUNTY AND DISTRICT LIAISON COMMITTEE**

Chair - Marc J. Somerville, Q.C.

The Committee continued in 1988-89 to ensure that the County and District Law Associations through their Executive are kept aware of the issues under consideration by the Society. The Committee also functions as a vehicle for the County & District Law Associations to bring their concerns to the attention of the Benchers. In this way each group has the benefit of regular informal exchanges with the other on matters of mutual concern as well as the opportunity to seek or provide input on a variety of topics.

In addition to their involvement with this Committee, representatives of the County and District Law Associations have participated in the work of some of the Special Standing Committees of the Society.

#### **UNAUTHORIZED PRACTICE COMMITTEE**

Chair - Clayton C. Ruby

In the past year, the Unauthorized Practice Department has continued to investigate and prosecute instances of unauthorized practice having secured fifteen convictions since July, 1988. The Department has also been successful in two injunction applications as well as in defending an appeal of an earlier successful injunction. The Department currently has twenty prosecutions before the courts and anticipates several more applications for injunctions within the next twelve months.

The Ontario Task Force On Paralegals, which is chaired by Dr. Ronald Ianni, President of the University of Windsor, is expected shortly to make public its recommendations with respect to the practice of independent paralegals. This Report, which is due in the fall of 1989, has been preceded by a discussion paper and public hearings which took place during the months of June and July. Briefly, the Task Force is looking into the current practice of independent paralegals in the province in an effort to determine in what areas, if any, they should be allowed to practise and within what educational and regulatory constraints. Several interested groups have made submissions to the Task Force including the Law Society of Upper Canada and the Canadian Bar Association (Ontario).

The areas of law practised by independent paralegals include traffic court, landlord and tenant court and small claims court, all areas recognized under the POINTTS decision of the Ontario Court of Appeal (R.v. Lawrie and Pointts Ltd. (1987), 59 O.R.(2d) 161). Independent paralegals also continue to offer services in the area of divorce, wills, incorporations and real estate, all of which have been deemed by the courts to be in violation of the unauthorized practice legislation in Ontario. In an effort to educate the public as to the advantages of going to a lawyer as opposed to an independent paralegal, the Society has commenced a public information program which is being run in various newspapers across the province. These advertisements are being placed in the classified advertisement sections of the newspapers where independent paralegals commonly advertise. It is hoped that this campaign, in addition to the prosecutions, will effectively send the message to the public that one's legal needs can only be competently dealt with by a lawyer.

**PUBLIC INFORMATION COMMITTEE**  
Chair - Ian W. Outerbridge, Q.C.

The Public Information Committee continues to maintain and enhance public information and access through the programs detailed below.

**DIAL-A-LAW**

For the period July 1, 1988 to June 30, 1989, the Dial-A-Law program handled 234,364 calls (an average of 744 calls per day). This is an increase of 115,062 calls from the same period last year.

The increase was realized largely through the use of a computerized touch-tone phone system. The system allows callers with touch-tone phones to access the system's 130 tapes 24 hours a day, 7 days a week. For callers without touch-tone phones, a Dial-A-Law operator is available during regular business hours.

An extensive advertising campaign was undertaken. The Dial-A-Law pamphlets were distributed to over 500 supermarkets. Newspaper advertisements were placed across Ontario. These advertisements ran from mid-November to early December of 1988, and then were withdrawn for the remainder of the Christmas season. The newspaper campaign was reactivated on January 3, 1989.

A new radio advertisement was aired in the Toronto, London and Ottawa markets on January 3, 1989. The new advertisement entitled "Bing and Betty" was created by Camp Associates who also created the highly successful and award winning "Mort and Millie" advertisement. There were two versions of the new advertisement. One offering the Toronto and area telephone number; the other offering a toll-free number for the 519, 613 and 705 area codes.

An Ottawa "satellite" Dial-A-Law system is being installed in order to reduce watts line charges. This system, identical to the Dial-A-Law system currently in use, will be placed in the Ottawa Bar Admission office. All calls to the system from the 613 area code will be local and therefore toll-free.

In an effort to provide legal information to individuals whose first language is not English, the Dial-A-Law transcripts are being translated into French, Chinese (Cantonese) and Portuguese.

A complete library of French tapes will be available by the fall of 1989. A disc-drive update will be undertaken to accommodate the additional French language tapes.

The Toronto Chinese Community Services Association and the Portuguese Social Service Centre of Toronto have agreed to provide translation services to Dial-A-Law at no cost. In return, the Society will provide each Association with Chinese or Portuguese pamphlets outlining the new Dial-A-Law system, for distribution to the members of their communities.

#### **LAWYER REFERRAL SERVICE**

Early in 1988, the Lawyer Referral Service system became computer-operated. The system's six operators are better able to service thousands of Ontario residents seeking a lawyer. The service continues to offer a free half-hour consultation with a lawyer.

For the period July 1, 1988 to June 30, 1989 the system received 118,893 calls (an average of 484 calls per day). This is an increase of 13,527 calls from the same period last year.

#### **OTHER PROGRAMS**

Thousands of the Society's information brochures were distributed throughout the Province.

The Committee continued to organize the Law Society/Legal Aid booth appearances at home shows and similar exhibitions across the province.

Media liaison was maintained at a high level.

The Law Society and Legal Aid Annual Reports have been widely distributed.

The Committee is in the process of producing the Law Society Booklet. The booklet, designed to provide a concise summary of the responsibilities and concerns of the Society will be distributed to elected members at all levels of government, the media and other interested groups.

**LEGISLATION AND RULES COMMITTEE**  
Chair - C. Bruce Noble, Q.C.

The Legislation and Rules Committee has undertaken a comprehensive review of proposed amendments to the Law Society Act which were submitted to the Attorney General from 1977 to 1989. With an extensive report detailing previous recommendations now complete, the Committee is evaluating the contents of the report in light of the Society's present policies and the recommendations of the report of the Provincial Government's Professional Organizations Committee. The current legislative needs of the Law Society have been discussed with representatives of the Attorney General. As a result, a bill containing a number of amendments proposed by the Law Society and approved by the Attorney General and including the provision for the incorporation of law firms had its first reading in the Ontario Legislature before the summer recess. As the Committee's examination of the matter continues, it is anticipated that further legislative changes will result.

**PRACTICE AND INSURANCE COMMITTEE**  
Chair - Patrick J. Furlong, Q.C.

**ERRORS AND OMISSIONS**

Following seven years of harmonious relationship between the Law Society and American Home Assurance Company, the Law Society decided to seek alternative quotations for the 1989-90 renewal of its program.

Notwithstanding the increasing number of incidents and claims reported over the last two to three years, the Law Society's objective to directly respond to the expected loss costs and only insure the "unexpected", has effectively increased the availability of insurance for its members at both the primary and excess layers at extremely competitive prices.

Effective July 1, 1989, the Law Society's mandatory Insurance Program has been placed with Lloyd's of London. Coverage to its members remains at \$1,000,000.00 per occurrence, \$250,000.00 claim and defence deductible. The individual member's deductible, which may range from \$3,500.00 to \$10,000.00 per occurrence, applies only to actual claim payments.

As a matter of interest, following the decision to move the program to Lloyd's of London, the commitment to underwrite was over subscribed within ten days.

#### PRACTICE ADVISORY SERVICE

The Practice Advisory Service has responded to approximately 6,000 requests from members for guidance and assistance in a wide variety of subjects and needs. About 125 calls per month are for assistance in client matters, with considerable input concerning ethical issues in almost every area of practice. Practice administration gives rise to most of the calls to the service with ethical issues or Errors and Omissions risk reduction being principal concerns. We note a substantial increase in calls related to potential conflict of interest and protection of solicitor-client privilege. In regard to the latter, the Service notes that Revenue Canada appears to have become much more aggressive in demanding client information from solicitors. The Service is receiving about four calls per week from members who have received demand letters, Search Warrants or Subpoenas to appear and produce files in regard to client Income Tax matters.

The Advisory Service continues to provide management consulting services to members in their offices, in response to member requests and as part of the Professional Standards Program. Guidance has also been provided to a number of members requiring treatment or assistance with personal problems (health, stress, alcoholism etc.) and has been effective in helping several return to private practice after treatment. It is a reflection of the high degree of confidence that members place in the Advisory Service when they will call this department of the Law Society for assistance concerning serious personal problems.

#### COMPENSATION FUND COMMITTEE

Chair - Roger D. Yachetti, Q.C.

During the fiscal year July 1, 1988 to June 30, 1989 the amount in the Compensation Fund increased from \$22,446,424 on July 1, 1988 to \$27,716,043 as at the end of the fiscal year, June 30, 1989. The outstanding claims as at the end of the fiscal year, still to be processed, amounted to \$11,945,884.

The Compensation Fund Levy for the coming fiscal year was reduced by Convocation from \$135 to \$50. Substantial interest earned on monies in the fund enabled this large reduction in the levy. In addition, claims were not up significantly from the previous year. The Fund has built up to the point where it may soon be self funding.

There were no changes to the General Guidelines for the Fund.

In January 1988 Convocation abolished the per solicitor limit which limited the total amount that could be paid out in grants as a result of one solicitor's dishonesty. The abolition of the per solicitor limit only applied to new matters where the Society was not already investigating the solicitor as of January, 1988. Several matters are now being processed where the abolition of the per solicitor limit will apply. It is still too early to report as to the long range effect of the abolition of the per solicitor limit because no grant payments have been made on those matters.

Invariably, the very large claims against one solicitor arise in situations where claimants have given large sums of money to the dishonest solicitor to invest, sometimes without any security and often on the inducement of an excessive rate of return. Convocation will be considering changes to the Regulation made under the Law Society Act which will strengthen bookkeeping and reporting requirements to investors for solicitors handling mortgage investments for their clients. The solicitor will be required to report accurately, and in detail, what security is being obtained.

The Committee is investigating ways to improve the amounts of recoveries from disbarred members after payments are made from the Compensation Fund.

**PROFESSIONAL STANDARDS COMMITTEE**  
Chair - Jeffery S. Lyons, Q.C.

The Professional Standards Committee was established as a result of a recognition that standards of competency, as applied to both the profession generally and individual lawyers, required increased attention from the Law Society.

The Committee has embarked on two initiatives in an effort to improve overall standards of competency. One such initiative has been the establishment of subcommittees entrusted with the task of formulating general competency guidelines for lawyers practising in different areas of law. The subcommittees are composed of Law Society Benchers and experienced counsel drawn from private practice throughout the Province. To date, criminal law guidelines have been finalized and distributed and significant progress has been made in the development of guidelines for practitioners in the areas of wills and estates and family law.

The Committee is also responsible for the development of programs designed to assist individual lawyers who have demonstrated an inability to deliver competent legal services to their clients. The major initiative in this regard has been the Practice Review Program which is a form of voluntary peer review whereby lawyers with identified deficiencies are matched with lawyers with similar practice backgrounds. The objective is for the reviewer to identify the deficiencies which underlie the lawyer's problems and to propose a remedial program to be monitored by the Law Society. Referrals for the Program are generally received through the various departments of the Law Society which come into regular contact with the profession (i.e., Complaints, Errors & Omissions and Audit).

The Program is entirely consensual and is offered at no expense to the referred lawyer.

The Committee is also working with other departments of the Law Society on various methods of maintaining and improving the general level of competency in the legal profession. Co-ordinating the activities of the Practice Advisory Service with those of the Practice Review Program and the development of a Stress Assistance Program are examples of these initiatives.

**RESEARCH & PLANNING COMMITTEE**

Chair - James M. Spence, Q.C.

The Research & Planning Committee has vigorously pursued its mandate to develop and maintain a forward looking perspective.

The Committee hosted the first Benchers' Retreat. Speakers from Canada, Great Britain and the United States assisted participants in considering the future of the profession and the Society. Several important projects are under consideration as a result of these deliberations.

Convocation has implemented the report which provided for open sittings of Convocation and has set guidelines for matters to be heard in-camera.

The Sub-committee on Women in the Legal Profession was established. It has conducted an extensive analysis of the Society's demographic data. The final report will provide a profile of the status of women in the Ontario Bar and a basis for further research.

The Society is in the process of implementing its policy of gender neutral language which was developed by this Sub-committee.

Convocation authorized the Society's participation in a pilot project which will provide assistance to members experiencing stress related problems. The program will be governed by a Board of Directors who

represent various legal organizations including the Society and Canadian Bar Association - Ontario. The direct source costs will be assumed by the Law Society with the other participants bearing the promotional and administrative expenses.

Other continuing projects of this Committee are:

Alternative Dispute Resolution;  
Benchers' Responsibilities Study and  
Voluntary Pro Bono Legal Services.

**LIBRARIES AND REPORTING COMMITTEE**  
Chair - Daniel J. Murphy, Q.C.

**GREAT LIBRARY**

Several projects to enhance the condition, accessibility and value of the Great Library's book collection are in various stages of completion. All have benefited from significant financial assistance from the Law Foundation of Ontario. The latest project is to assess the Library's special collections of rare book and Canadiana material. On-going book preservation work, which involves the cleaning, repairing, binding and re-binding of many thousands of reports, statutes, periodicals and textbooks annually, is undertaken by the Great Library's collection development staff. Other services of the Great Library that have become increasingly popular are the automated legal research activities of Search-Law (especially the new Wrongful Dismissal Database provided by Barry Fisher and Lori Greenfield), as well as the fax service offered by the Great Library's reference branch. Copies of cases and legislative material are telecopied throughout the province on a same-day basis.

**COUNTY & DISTRICT LIBRARIES**

The County Law Associations are in the midst of a capital development project to upgrade equipment and technology in the County Libraries. A substantial number of new photocopiers and fax machines have been placed in various libraries, with more to follow. A capital grant of \$100,000 from the Law Foundation financed this initiative. The need for such technology arose from consultations with the County & District Law Presidents' Association (CDLPA) specifically its Library Committee chaired by Randall W. Lalande of Sudbury with assistance from Donald MacKenzie of Brampton. The active involvement of CDLPA and Messrs. Lalande, MacKenzie and others in county library matters such as funding, budgeting, employment benefit plans, and technology is greatly appreciated.

## ONTARIO REPORTS

The latest development in the Law Society's program to enhance the usefulness of the Ontario Reports is the publication of a new three-volume Consolidated Index to the second series of the Ontario Reports, volumes 1 to 64. The inclusion of buff pages approximately once a month summarizing the Proceedings of Convocation has also been well received. The Ontario Reports plus (ORP) data base, including the Ontario Judgements (OJ) portion which provides access to Supreme Court of Ontario cases immediately upon release from the courts, continues to grow in usage and volume to Ontario lawyers and judges. The Libraries & Reporting Committee is currently working on new tenders for the reports, data base and other technology to enhance accessibility to the decisions of the Ontario Courts.

## CERTIFICATION BOARD

Chair - Kenneth E. Howie, Q.C.

The Law Society's Certification Program for Civil and/or Criminal Litigation Specialists is off the ground.

From August to December 1988 the automatic certification of some senior practitioners, without the need of application on their part, was implemented. This provided the Law Society with a core group of Specialists to assist the Program in its early stages. The first group of applications was considered in May 1989. As at June 1989, 313 Civil Litigation Specialists, 78 Criminal Litigation Specialists, and 34 Civil and Criminal Litigation Specialists had been certified by the Law Society.

The Family Law Sub-Committee has developed standards for Family Law Specialists and Family Law applications may be considered as early as the fall of 1989. It is anticipated that other areas of specialty will be implemented in due course.

With the addition of new areas of specialty in mind, a proposal to restructure the Board into a two-tiered system, with one superior Certification Board plus various Specialty Committees, has recently been approved and came into effect on July 1, 1989.

Two representatives of the Law Society of Upper Canada attended, for the first time, the American Bar Association's annual Specialization Conference in April 1989. The experiences of various specialization programs in the United States have been invaluable to the Law Society and, without a doubt, have accelerated the implementation of its Certification Program. Other Canadian Law Societies who have expressed an interest in this province's certification of Specialists are also being encouraged to liaise with the American Bar Association's Standing Committee on Specialization.

Standard procedures for each stage of the certification process and a booklet of guidelines for general distribution are being prepared and should be available by the fall of 1989.

**FRENCH LANGUAGE SERVICES COMMITTEE**  
Chair - Colin D. McKinnon, Q.C.

The Special Committee on French Language Services met for the first time in December 1988. The mandate of the Committee was to work on the formulation and implementation of a French Language Services Policy for the Law Society.

Committee members met monthly from January to June 1989. The January meeting, held in Ottawa, was attended by three representatives of two Ontario special interest associations, l'Association des juristes d'expression française de l'Ontario and l'Association canadienne-française de l'Ontario, as well as a representative from the Canadian Department of the Secretary of State, who was able to provide information on government funding.

The Committee prepared a response on behalf of the Law Society to the Attorney General of Ontario's Consultation Paper on the use of French Language in the Courts. This response, in support of the Attorney General's initiative for reform, was adopted by Convocation in May 1989.

The culmination of the Committee's efforts occurred in June 1989, when Convocation adopted the Committee's French Language Services Policy Proposal, consisting of seven recommendations, set out as follows:

1. The Law Society is committed to providing services in the French language to its own members and to the public from Osgoode Hall and other Society offices in Toronto and from our facilities in the city of Ottawa.
2. The Law Society is committed to providing instruction and materials in the French language to students pursuing the Bar Admission Course in the city of Ottawa.
3. The Law Society is committed to providing Continuing Legal Education programs in the French language.
4. The Law Society is committed to reviewing its existing programs and future programs with the goal of bringing these programs into conformity with its policy on the provision of French language services.

5. The above commitments are subject to such limits as circumstances make reasonable and necessary with the goal of having the policy substantially implemented within three years.
6. The French Language Services Policy shall be reviewed annually to determine the progress of its implementation and to consider how particular programs might be improved.
7. For the purposes of implementing and monitoring its policy, the French Language Services Committee should be made a Standing Committee of the Law Society of Upper Canada.

THE LAW SOCIETY OF UPPER CANADA

FINANCIAL STATEMENT JUNE 30, 1989

**AUDITORS' REPORT**

To the Members of  
The Law Society of Upper Canada

We have examined the balance sheet of The Law Society of Upper Canada as at June 30, 1989 and the General Fund statements of revenue and expenses and operating surplus, the General Fund statement of changes in financial position and the Errors and Omissions Insurance Fund and Compensation Fund statements of revenue and expenses and balance of fund for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

In our opinion, these financial statements present fairly the financial position of the funds as at June 30, 1989 and the results of operations of the funds and the changes in financial position of the General Fund for the year then ended in accordance with generally accepted accounting principles applied, after giving retroactive effect to the change in the method of accounting for the reserve for major capital expenditures, and the change to full accrual accounting, as described in note 1 to the financial statements, on a basis consistent with that of the preceding year.

Toronto, Canada,  
August 25, 1989.

*Clarkson Gordon*

Chartered Accountants

The Law Society of Upper Canada

BALANCE SHEET

As at June 30

	1989 \$	1988 \$
[restated note 1]		
<b>ASSETS</b>		
<b>General fund</b>		
<b>Current</b>		
Short-term investments, at lower of cost and market value [approximate market value \$9,409,172; 1988 - \$6,850,237]	9,251,989	6,823,901
Accounts receivable	930,158	886,411
Inventory	220,493	166,085
Prepaid expenses	166,413	—
<b>Total current assets</b>	<b>10,569,053</b>	<b>7,876,397</b>
<b>Fixed assets, at cost</b>		
Land, building, furnishings and major alterations [note 5]	7,928,314	7,626,411
	<b>18,497,367</b>	<b>15,502,808</b>
 <b>Errors and omissions insurance fund [note 6]</b>		
Short-term investments, at lower of cost and market value [approximate market value \$22,008,902; 1988 - \$12,386,846]	21,537,876	12,337,155
Deductible portion of claims due from members	398,097	456,540
Interest and other receivables	1,753,826	1,534,565
Portfolio investments, at amortized cost [market value \$42,320,179; 1988 - \$37,674,043]	42,233,219	37,648,949
	<b>65,923,018</b>	<b>51,977,209</b>
 <b>Compensation fund [note 7]</b>		
Cash	39,933	176,028
Short-term investments, at lower of cost and market value [approximate market value \$4,442,723; 1988 - \$4,369,100]	4,398,748	4,323,959
Interest and other receivables	580,883	452,086
Portfolio investments, at amortized cost [market value \$22,773,125; 1988 - \$17,965,375]	22,696,479	18,178,288
	<b>27,716,043</b>	<b>23,130,361</b>
	<b>112,136,428</b>	<b>90,610,378</b>

On behalf of the Convocation:

Treasurer

Chairman of Finance Committee

	1989 \$	1988 \$
		[restated note 1]
<b>LIABILITIES AND BALANCES OF FUNDS</b>		
<b>General fund</b>		
<b>Current</b>		
Bank indebtedness	429,067	21,419
Accounts payable and accrued liabilities	1,841,954	1,817,942
Deferred revenue	264,521	80,202
<b>Total current liabilities</b>	<b>2,535,542</b>	<b>1,919,563</b>
<b>Balance of fund</b>		
Undesignated operating surplus	2,906,536	1,916,875
Designated operating surplus	2,076,571	1,812,659
Reserve for major capital expenditures [note 5]	3,050,404	2,227,303
Equity in fixed assets	7,928,314	7,626,411
<b>Total balance of fund</b>	<b>15,961,825</b>	<b>13,583,248</b>
	<b>18,497,367</b>	<b>15,502,811</b>
<b>Errors and omissions insurance fund [note 6]</b>		
Bank indebtedness	380,569	1,476,988
Accounts payable and accrued liabilities	1,397,123	1,266,408
Deferred revenue	6,410,122	1,019,129
Reserve for unpaid claims	54,102,383	45,025,065
Balance of fund	3,632,821	3,189,619
	<b>65,923,018</b>	<b>51,977,209</b>
<b>Compensation fund [note 7]</b>		
Accounts payable	2,957	45,268
Balance of fund	27,713,086	23,085,090
	<b>27,716,043</b>	<b>23,130,358</b>
	<b>112,136,428</b>	<b>90,610,378</b>

*See accompanying notes*

The Law Society of Upper Canada

GENERAL FUND  
STATEMENT OF REVENUE AND EXPENSES

Year ended June 30

	1989 \$	1988 \$
<b>REVENUE</b>		[restated note 1]
<b>General</b>		
Annual fees	11,255,249	8,972,746
Legal aid levy and interest	3,781,323	3,294,657
County libraries - fees	1,019,022	767,170
- The Law Foundation of Ontario grant	675,000	587,500
Investment income	883,674	521,424
Catering	612,044	552,865
Library user fees	424,972	349,725
Call and admission fees	382,680	380,888
Other grants	296,858	167,500
Miscellaneous	276,785	156,174
Ontario reports royalty	62,179	47,133
<b>Total general revenue</b>	<b>19,669,786</b>	<b>15,797,782</b>
 <b>Bar Admission Course</b>		
Tuition and book fees	1,671,711	1,560,844
Grants - Province of Ontario	863,000	826,000
- The Law Foundation of Ontario	743,437	407,521
<b>Total Bar Admission Course</b>	<b>3,278,148</b>	<b>2,794,365</b>
 <b>Continuing legal education</b>		
	2,080,773	2,043,554
<b>Total revenue</b>	<b>25,028,707</b>	<b>20,635,701</b>
 <b>EXPENSES</b>		
<b>General</b>		
Legal Aid Plan share of assessable administrative costs	3,583,958	3,275,150
Libraries and reporting	2,009,001	1,843,809
County libraries	1,831,837	1,500,583
Secretariat	1,948,654	1,494,851
Finance and administration	1,666,579	1,405,657
Discipline	1,493,353	1,179,142
Building and grounds	1,385,554	1,469,340
Audit	1,177,741	1,197,157
Public information	1,097,399	848,594
Catering	596,755	507,095
Unauthorized practice	210,923	176,375
Professional conduct	152,533	191,339
Muniments and memorabilia	148,443	75,918
County and district liaison	59,305	40,760
Admissions	47,143	7,195
<b>Total general expenses</b>	<b>17,409,178</b>	<b>15,212,965</b>
 Bar Admission Course (note 3)	3,278,148	2,794,365
Continuing legal education	1,962,807	1,957,650
<b>Total expenses</b>	<b>22,650,133</b>	<b>19,964,980</b>
 <b>Excess of revenue over expenses for the year</b>	<b>2,378,574</b>	<b>670,721</b>

*See accompanying notes*

The Law Society of Upper Canada

GENERAL FUND  
STATEMENT OF OPERATING SURPLUS

Year ended June 30

	Undesignated surplus \$	Designated surplus \$	Total 1989 \$	Total 1988 \$
				[restated note 1]
<b>Balance, beginning of year</b>				
As previously reported	1,916,877	—	1,916,877	1,797,700
Adjustment for restatement of prior years	—	1,812,659	1,812,659	1,761,113
As restated	1,916,877	1,812,659	3,729,536	3,558,813
Excess of revenue over expenses for the year	2,378,574	—	2,378,574	670,721
Allocation to designated surplus	(263,912)	263,912	—	—
Appropriation for major capital expenditures	(1,125,003)	—	(1,125,003)	(500,000)
<b>Balance, end of year</b>	<b>2,906,536</b>	<b>2,076,571</b>	<b>4,983,107</b>	<b>3,729,534</b>

*See accompanying notes*

**The Law Society of Upper Canada**

**ERRORS AND OMISSIONS INSURANCE FUND  
STATEMENT OF REVENUE AND EXPENSES AND  
BALANCE OF FUND**

Year ended June 30,

	1989 \$	1988 \$
<b>REVENUE</b>		
Members' levy	20,131,092	14,732,637
Investment income	5,826,670	4,721,135
Miscellaneous	38,730	27,674
<b>Total revenue</b>	<b>25,996,492</b>	<b>19,481,446</b>
<b>EXPENSES</b>		
Provision for claims, defence and related costs	20,249,178	21,193,368
Insurance premium	3,463,733	2,470,000
Salaries	751,408	664,174
Administration	448,037	419,631
Brokerage fees	100,000	80,000
Rent	144,283	141,304
Practice advisory services	396,651	396,254
<b>Total expenses</b>	<b>25,553,290</b>	<b>25,364,731</b>
<b>Excess (deficiency) of revenue over expenses for the year</b>	<b>443,202</b>	<b>(5,883,285)</b>
<b>Balance of fund, beginning of year</b>	<b>3,189,619</b>	<b>9,072,904</b>
<b>Balance of fund held for unpaid claims and expenses, end of year</b>	<b>3,632,821</b>	<b>3,189,619</b>

*See accompanying notes*

**The Law Society of Upper Canada**

**COMPENSATION FUND  
STATEMENT OF REVENUE AND EXPENSES AND  
BALANCE OF FUND**

Year ended June 30

	1989	1988
	\$	\$
<b>REVENUE</b>		
Annual levy	2,804,315	4,245,372
Investment income	2,456,610	1,873,418
<b>Total revenue</b>	<b>5,260,925</b>	<b>6,118,790</b>
<b>EXPENSES</b>		
Grants paid, less recoveries	365,851	804,443
Counsel fees, referee fees and administrative costs	55,255	108,171
Salaries and benefits	193,364	186,813
Reporters and sundries	13,604	14,881
Computer project	4,855	8,682
<b>Total expenses</b>	<b>632,929</b>	<b>1,122,990</b>
<b>Excess of revenue over expenses for the year</b>	<b>4,627,996</b>	<b>4,995,800</b>
<b>Balance of fund, beginning of year</b>	<b>23,085,090</b>	<b>18,089,290</b>
<b>Balance of fund, end of year</b>	<b>27,713,086</b>	<b>23,085,090</b>

*See accompanying notes*

**The Law Society of Upper Canada**

**GENERAL FUND  
STATEMENT OF CHANGES IN FINANCIAL POSITION**

Year ended June 30

	<b>1989</b> \$	<b>1988</b> \$
		[restated note 1]
<b>OPERATING ACTIVITIES</b>		
Cash and short-term investments provided by operating activities		
Excess of revenue over expenses for the year	2,378,574	670,721
Other operating sources (uses)		
Accounts receivable	(43,747)	(243,262)
Inventory	(54,408)	12,960
Prepaid expenses	(166,413)	59,989
Accounts payable and accrued liabilities	24,017	871,243
Deferred revenue	184,319	(44,798)
<b>Cash provided by operating activities</b>	<b>2,322,342</b>	<b>1,326,853</b>
<b>INVESTING ACTIVITIES</b>		
Cash and short-term investments used in investing activities		
Fixed asset additions	(301,902)	(76,417)
<b>Net increase in cash and short-term investments during the year</b>	<b>2,020,440</b>	<b>1,250,436</b>
<b>Cash position, beginning of year</b>	<b>6,802,482</b>	<b>5,552,046</b>
<b>Cash position, end of year</b>	<b>8,822,922</b>	<b>6,802,482</b>
<b>Cash position represented by</b>		
Short-term investments	9,251,989	6,823,901
Bank indebtedness	(429,067)	(21,419)
	<b>8,822,922</b>	<b>6,802,482</b>

*See accompanying notes*

## The Law Society of Upper Canada

### NOTES TO FINANCIAL STATEMENTS

June 30, 1989

#### 1. CHANGES IN BASIS OF ACCOUNTING

Effective July, 1988 The Law Society of Upper Canada [the "Society"] adopted, on a retroactive basis, the new accounting recommendations of the Canadian Institute of Chartered Accountants for non-profit organizations. The Society follows generally accepted accounting principles, including accounting for reserves as capital transactions, and for full accrual accounting.

The prior year's financial statements have been restated to conform with these new policies. As a result, the general fund's excess of revenue over expenses for the year were increased by \$1,125,003 [1988 - \$500,000] for the change in the method of accounting for the reserve for major capital expenditures. As a result of the change to full accrual accounting, the excess of revenue over expenses has been increased by \$263,912 [1988 - \$51,544].

#### 2. SIGNIFICANT ACCOUNTING POLICIES

The Society uses fund accounting, whereby the general fund is used to account for the Society's various operations, the compensation fund for its compensation grants, and the errors and omissions insurance fund for insurance claims [partly self-insured] and for administrative costs and adjusters' fees.

Short-term investments are stated at the lower of cost and market value.

Portfolio investments held for the compensation fund and the errors and omissions insurance fund are recorded at cost, net of amortization of premiums and discounts. Premiums and discounts from the par value are amortized over the term to maturity.

Inventory is valued at the lower of cost and net realizable value.

Land, building, furnishings and major alterations are stated at cost. No depreciation is recorded in the accounts in respect of these assets. However, an annual appropriation for major capital expenditures is made from the operating surplus. Minor capital expenditures are expensed in the year of acquisition.

Grants from the compensation fund are recognized when the liability is reasonably determinable.

Administrative expenses include only those salaries and other expenses not allocated directly to specific activities.

The work of the Society is dependent on the voluntary services of the benchers, lay benchers, and other members of the profession. These services are received gratuitously, therefore no value has been included in these financial statements.

## The Law Society of Upper Canada

### NOTES TO FINANCIAL STATEMENTS

June 30, 1989

The Society is empowered to administer the Legal Aid Plan and to maintain the Legal Aid Fund in accordance with the Legal Aid Act. The Society reports annually to the Attorney General on the accounts and financial transactions of the Legal Aid Fund. The financial statements of the Legal Aid Fund are subject to audit by the Provincial Auditor, and are not included in these financial statements. The activities of the Advocates' Society Institute, a related organization, are not incorporated into these financial statements.

A statement of changes in financial position has not been included for the errors and omissions insurance fund, or the compensation fund, as management is of the opinion that such statements would not provide any additional meaningful information.

#### 3. LEGAL EDUCATION

##### The Law Foundation of Ontario Bar Admission Course grants

During the year the Society obtained grants from The Law Foundation of Ontario to cover the Bar Admission Course deficiency of revenues from fees and the Province of Ontario over expenses as follows:

	Authorized \$	Utilized \$
up to a maximum of		
1988/1989 Operating deficit	650,000	534,196
Grant for computer facilities	129,085	129,085
Bar Admission Course Reform	196,250	80,156
		743,437
<u>Received during the year</u>		526,060
<u>Amount receivable at June 30, 1989</u>		217,377

The unutilized portion of the Bar Admission Course Reform grant is available to offset expenditures during the 1989/1990 fiscal year. In addition, The Law Foundation of Ontario has authorized a further \$275,600 for Bar Admission Course Reform for the 1989/1990 fiscal year.

## The Law Society of Upper Canada

### NOTES TO FINANCIAL STATEMENTS

June 30, 1989

#### Legal education operating results

The results of operations of the Society's legal education programs are as follows:

	Bar Admission Course \$	Continuing legal education \$
Revenue	3,278,148	2,080,773
Expenses	3,278,148	1,962,807
<b>Excess of revenue over expenses for the year</b>	<b>—</b>	<b>117,966</b>

### 4. THE LAW FOUNDATION OF ONTARIO - GENERAL GRANTS

#### County and district library grants

The Society received from The Law Foundation of Ontario, on behalf of county and district libraries, \$675,000 of which \$654,705 was disbursed on account of administrative costs and the purchase of books.

#### Other grants

A further \$287,500 was received from The Law Foundation of Ontario to support Dial-A-Law, monuments and memorabilia, and publication of the Gazette.

### 5. RESERVE FOR MAJOR CAPITAL EXPENDITURES

The Society makes an annual provision for major capital expenditures. As such expenditures are made, the accumulated provision is reduced and equity in fixed assets is increased by a corresponding amount. The cost of books and records for the libraries are expensed when purchased.

The building and equipment of the Society are valued for insurance purposes at an estimated replacement cost of \$40,500,000. The books and records located at the Great Library are valued for insurance purposes at an estimated replacement cost of \$16,500,000. The books and records located at county and district libraries are valued for insurance purposes at an estimated replacement cost of \$15,905,231.

## The Law Society of Upper Canada

### NOTES TO FINANCIAL STATEMENTS

June 30, 1989

Details of the account are as follows:

	1989 \$	1988 \$
<b>Reserve balance, beginning of year</b>	<b>2,227,303</b>	<b>1,803,721</b>
Less amount expended during the year	(301,902)	(76,418)
<b>Provision for major capital expenditures</b>	<b>1,125,003</b>	<b>500,000</b>
<b>Reserve balance, end of year</b>	<b>3,050,404</b>	<b>2,227,303</b>

### 6. ERRORS AND OMISSIONS INSURANCE FUND

The Society's current errors and omissions insurance plan insures members against claims for errors discovered from calendar year 1977 onwards, with losses being covered, for 1983 to the present, on the following basis:

		1989 \$	1988 \$	1987 \$	1983 through 1986 \$
<b>Borne by</b>					
Member	first	5,000	5,000	5,000	5,000
Errors and Omissions					
Insurance Fund	next	245,000	145,000	145,000	95,000
Insurer	next	750,000	450,000	450,000	400,000
<b>Total coverage per occurrence</b>		<b>1,000,000</b>	<b>600,000</b>	<b>600,000</b>	<b>500,000</b>

A separate fund is set up each year to provide for claims reported to the Society during that year. The maximum fund loss experience for any year is limited by a stop loss agreement with the insurer.

The Society adopted in 1988 the accrual method of accounting for the cost of unpaid claims. The accrual method estimates the amounts necessary to settle claims made in the current year together with adjustments to amounts recorded in prior years, and records this amount as the claims expense for the year.

## The Law Society of Upper Canada

### NOTES TO FINANCIAL STATEMENTS

June 30, 1989

The change in reserves set aside to meet unpaid claims is as follows:

	1989 \$	1988 \$
<b>Reserve balance, beginning of year</b>	<b>45,025,065</b>	33,391,380
Provision for unpaid claims	20,249,178	21,193,368
Less payments	(11,171,860)	(9,559,683)
<b>Reserve balance, end of year</b>	<b>54,102,383</b>	45,025,065

Members may obtain bank loans to enable them to repay their liability for the deductible portion of claims paid. The Society has guaranteed these loans. Loans outstanding at June 30, 1989 amount to \$90,858 [1988 - \$194,103].

Deferred revenue arises principally from prepaid levies.

#### 7. COMPENSATION FUND

Convocation may make grants from the compensation fund in order to relieve or mitigate loss sustained by any person arising mainly from dishonesty on the part of a member of the Society.

Annual levies for this fund vary from year to year to reflect the anticipated grants. At the year end, claim applications of approximately \$11,311,445 [1988 - \$11,881,302] had been received. Grants are made within discretionary limits approved by convocation. Strict application of the applicable limits to existing claims indicates that the maximum grants under the program would aggregate \$4,036,769 [1988 - \$5,043,760].

#### 8. ENDOWMENT FUNDS

The Society administers endowment funds from earned income of which prizes, bursaries and gifts are made annually. At the year end, the endowment funds consisted of cash, investments and interest and other receivables of \$408,581 [1988 - \$392,438], of which \$236,344 was capital and the balance of \$172,237 [1988 - \$157,442] was unexpended income. Prizes, bursaries and gifts of \$14,859 [1988 - \$8,492] were paid during the year.

#### 9. PENSION PLAN

The Society maintains a defined contribution pension plan for all eligible employees. The plan covers 152 employees of the Society and 235 employees at the offices of the Legal Aid Plan. The Society matches its employees' contributions to the plan.

The Society's annual pension expense [excluding Legal Aid] for 1989 amounted to \$210,745 [1988 - \$239,000].

## The Law Society of Upper Canada

### NOTES TO FINANCIAL STATEMENTS

June 30, 1989

#### 10. LEASE COMMITMENTS

The Society is committed to monthly lease payments for property and computer facilities under leases having various terms up to June, 1993. Approximate monthly lease payments over the next five years and in total are as follows:

	1990 \$	1991 \$	1992 \$	1993 \$	Total \$
<b>Bar Admission Course</b>					
London	90,100	90,100	88,900	—	269,100
Ottawa	135,000	145,000	145,000	145,000	570,000
<b>204 Richmond Street W.</b>					
Toronto	282,100	—	—	—	282,100
Computer equipment	97,400	97,400	56,800	—	251,600
	604,600	332,500	290,700	145,000	1,372,800

#### 11. LEGAL AID FUND

Annual fees this year included an amount of \$175 per member as the Society's contribution to the administration of the Legal Aid Plan. The designated legal aid surplus represents the balance of funds collected from members after having paid or accrued the statutory contribution of \$3,583,958, which is 25% of the "assessable administrative costs" of the Legal Aid Plan for its fiscal year ended March 31, 1989.

**The Law Society of Upper Canada**

**NOTES TO FINANCIAL STATEMENTS**

June 30, 1989

**12. DESIGNATED SURPLUS**

Designated surplus represents the excess of funds received that has been designated for specific purposes over the related expense at the year end. These amounts are as follows:

	<b>1989</b> \$	<b>1988</b> \$
Legal aid	1,866,748	1,669,383
Articling matching programme	27,000	18,000
Education - employment placement	8,277	13,433
Muniments and memorabilia	4,781	1,667
Library		
Levies	85,762	—
The Law Foundation of Ontario grants	84,003	110,176
	<b>2,076,571</b>	<b>1,812,659</b>

**13. RECLASSIFICATION**

Certain of the 1988 comparative figures have been reclassified to conform to the presentation adopted in the current year.

**BENCHERS OF**  
**THE LAW SOCIETY OF UPPER CANADA**  
at June 30, 1989

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The Rt. Hon. Margaret Thatcher, M.P.  
Kenneth Jarvis, Q.C., R.C.A.

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Lee K. Ferrier, Q.C.

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THE LAW SOCIETY OF UPPER CANADA  
at June 30, 1989

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